

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN SHIPMON,
Plaintiff,
v.
ASHFORD UNIVERSITY,
Defendant.

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)
) **C.A. No.: 2:19-cv-1569**
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)
) **COMPLAINT AND DEMAND FOR**
) **JURY TRIAL**
)

COMPLAINT

JOHN SHIPMON (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against ASHFORD UNIVERSITY (“DEFENDANT”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act, 47 U.S.C. §227.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant regularly conducts business in the Commonwealth of Pennsylvania, thus, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 **PARTIES**

3 5. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).

4 6. Plaintiff is a natural person residing in Pittsburgh, Pennsylvania
5 15233.

6 7. Defendant is a “person” as that term is defined by 47 U.S.C. §
7 153(39).

8 8. Defendant is a corporation with its principal place of business located
9 at 13500 Evening Creek Drive North, Suite 600, San Diego, California 92128.

10 9. Defendant acted through its agents, employees, officers, members,
11 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
12 representatives, and insurers.

13 **FACTUAL ALLEGATIONS**

14 10. Plaintiff has a cellular telephone number that he has had for at least
15 one year.

16 11. Plaintiff has only used this phone as a cellular telephone.

17 12. Defendant placed repeated harassing telephone calls to plaintiff.

18 13. Defendant used an automatic telephone dialing system, automated
19 message and/or prerecorded voice when contacting Plaintiff.

1 22. Upon information and belief, Defendant conducts business in a
2 manner which violates the TCPA.

3
4 **COUNT I**
5 **DEFENDANT VIOLATED THE TCPA**

6 23. Plaintiff incorporates the forgoing paragraphs as though the same were
7 set forth at length herein.

8 24. Defendant initiated multiple automated telephone calls to Plaintiff's
9 cellular telephone number.

10 25. Defendant's initiated these automated calls to Plaintiff using an
11 automatic telephone dialing system.

12 26. Defendant repeatedly placed non-emergency calls to Plaintiff's
13 cellular telephone.

14 27. Under § 227(b)(3)(A) of the TCPA, a person or entity may bring a
15 private cause of action in an appropriate court based on a violation of the TCPA or
16 the regulations prescribed under the TCPA to enjoin such violation.
17

18 28. Under § 227(b)(3)(B) of the TCPA, a person or entity may bring a
19 private cause of action in an appropriate court "to recover for actual monetary loss
20 from such a violation, or to receive \$500 in damages for each such violation
21 whichever is greater."
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1 29. Based upon the conduct of Defendant, Plaintiff avers that the
2 enhancement of damages provided for by the TCPA allowing for Plaintiff to
3 recover up to \$1,500 per call/violation be applied to calls placed.
4

5 30. Defendant's conduct violated § 227(b)(1)(A)(iii) of the TCPA by
6 placing repeated calls using an automatic telephone dialing system to Plaintiff's
7 cellular telephone.
8

9 31. Defendant's calls to Plaintiff's cellular telephone were not made with
10 Plaintiff's prior express consent.

11 32. Defendant's acts as described above were done with malicious,
12 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
13 under the law and with the purpose of harassing Plaintiff.
14

15 33. The acts and/or omissions of Defendant were done unfairly,
16 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
17 lawful right, legal defense, legal justification or legal excuse.
18

19 34. As a result of the above violations of the TCPA, Plaintiff has suffered
20 the losses and damages as set forth above entitling Plaintiff to an award of
21 statutory, actual and treble damages.
22

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, JOHN SHIPMON, respectfully prays for a judgment
25 as follows:
26

- a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);
- c. Treble damages of \$1,500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3);
- d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and
- e. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, JOHN SHIPMON, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

By: /s/ Amy L. Bennecoff Ginsburg
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Dated: 12-5-19